

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MORGAN MALEK
Deputy Attorney General
4 State Bar No. 223382
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2643
6 Facsimile: (213) 897-2804
Attorneys for Complainant
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8
9 **BEFORE THE**
DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

OREA Case No. C090722-04

12 **WILLIAM P. FERGUSON**
13 **3419 Via Lido #357**
14 **Newport Beach, CA 92663**

A C C U S A T I O N

15 **Real Estate Appraiser License No.**
16 **AL025728**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Elizabeth Seaters, acting on the behalf of the Office of Real Estate Appraisers
21 (Complainant), brings this action solely in his official capacity as Acting Chief of Enforcement
22 for Complainant. She is represented in this matter by Kamala E. Harris, Attorney General of the
23 State of California, by Morgan Malek, Deputy Attorney General.
24 2. On or about November 1, 2000, Complainant issued Residential Appraiser License
25 No. AL025728 to William P. Ferguson (Respondent). Respondent's Residential Appraiser
26 License was in full force and effect at all times relevant to the charges brought in this Accusation,
27 which is based on the Administrative Findings incorporated from Complaint No. C090722-04
28 (Case).

JURISDICTION

3. This Accusation is brought before the Director of the Office of Real Estate Appraisers (Director), under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Code section 11313 states, in pertinent part:

The office is under the supervision and control of the secretary. The duty of enforcing and administering this part is vested in the director and he or she is responsible to the secretary therefor. The director shall adopt and enforce rules and regulations as are determined reasonably necessary to carry out the purposes of this part.

5. Code section 11314 states, in pertinent part:

The office is required to include in its regulations requirements for licensure and discipline of real estate appraisers that ensure protection of the public interest...

6. Code section 11319 states:

Notwithstanding any other provision of this code, the Uniform Standards of Professional Appraisal Practice constitute the minimum standard of conduct and performance for a licensee in any work or service performed that is addressed by those standards. If a licensee also is certified by the Board of Equalization, he or she shall follow the standards established by the Board of Equalization when fulfilling his or her responsibilities for assessment purposes.

7. Code section 11325, subdivision (a) states:

The director shall adopt regulations which determine the parameters of appraisal work which may be performed by licensed appraisers.

8. Code section 11328 states, in pertinent part:

To substantiate documentation of appraisal experience, or to facilitate the investigation of illegal or unethical activities by a licensee, applicant, or other person acting in a capacity that requires a license, that licensee, applicant, or person shall, upon the request of the director, submit copies of appraisals, or any work product which is addressed by the Uniform Standards of Professional Appraisal Practice, and all supporting documentation and data to the office.

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1 directly and substantially related to and indispensable to the practice of the appraisal
2 profession; and

3 (3) Every holder of a license to practice real estate appraisal...shall be required to
4 demonstrate by his or her conduct that he or she possesses the qualifications of
5 honesty, candor, integrity, and trustworthiness.

6 ...

7 13. Regulation section 3721 states, in pertinent part:

8 (a) The Director may issue a citation, order of abatement, assess a fine or private or
9 public reproof, suspend or revoke any license, and/or may deny the issuance or renewal of
10 a license for any person who has:

11 ...

12 (2) Done any act involving dishonesty, fraud or deceit with the intent to benefit
13 himself or another, or to injure another;

14 ...

15 (4) Done any act which if done by the holder of a license to practice real estate
16 appraisal would be grounds for revocation or suspension of such license;

17 ...

18 (6) Violated any provision of USPAP;

19 (7) Violated any provision of the Real Estate Appraisers' Licensing and
20 Certification Law, Part 3 (commencing with Section 11300) of Division 4 of the
21 Business and Professions Code, or regulations promulgated pursuant thereto; or any
22 provision of the Business and Professions Code applicable to applicants for or holders
23 of licenses authorizing appraisals;

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1 **UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE**

2 **(EFFECTIVE JULY 1, 2006, THROUGH DECEMBER 31, 2007)¹**

3 14. Uniform Standards of Professional Appraisal Practice (USPSP), Standard 1, states:

4 In developing a real property appraisal, an appraiser must identify the problem to be
5 solved, determine the scope of work necessary to solve the problem, and correctly complete
6 research and analyses necessary to produce a credible appraisal.

7 15. USPAP Standards Rule 1-1, states:

8 In developing a real property appraisal, an appraiser must:

9 (a) be aware of, understand, and correctly employ those recognized methods and
10 techniques that are necessary to produce a credible appraisal;

11 (b) not commit a substantial error of omission or commission that significantly
12 affects an appraisal; and

13 (c) not render appraisal services in a careless or negligent manner, such as by
14 making a series of errors that, although individually might not significantly affect the
15 results of an appraisal, in the aggregate affect the credibility of those results.

16 16. USPAP Standards Rule 1-2 states:

17 In developing a real property appraisal, an appraiser must:

18 (a) identify the client and other intended users;

19 (b) identify the intended use of the appraiser's opinions and conclusions;

20 ...

21 (e) identify the characteristics of the property that are relevant to the type and

22 Definition of value and intended use of the appraisal, including:

23 (i) its location and physical, legal, and economic attributes;

24 (ii) the real property interest to be valued;

25 (iii) any personal property, trade fixtures, or intangible items that are not

26
27 ¹ USPAP is periodically revised: appraisers are responsible for adherence to the edition of USPAP in effect as of the date of report for
28 an appraisal. The July 1, 2006, edition of USPAP (effective July 1, 2006, through December 31, 2007) is applicable to the allegations in this
 accusation as the report date of the appraisal was September 19, 2006).

1 real property but are included in the appraisal;

2 (iv) any known easements, restrictions, encumbrances, leases, reservations,
3 covenants, contracts, declarations, special assessments, ordinances, or other items
4 of similar nature; and

5 (v) whether the subject property is a fractional interest, physical segment,
6 or partial holding;

7 (f) identify any extraordinary assumptions necessary in the assignment;

8 (g) identify any hypothetical conditions necessary in the assignment; and

9 (h) determine the scope of work necessary to produce credible assignment results
10 in accordance with the SCOPE OF WORK RULE.

11 17. USPAP Standards Rule 1-3 states:

12 When necessary for credible assignment results in determining a market value
13 opinion, an appraiser must:

14 (a) identify and analyze the effect on use and value of existing land use regulations,
15 reasonably probable modifications of such land use regulations, economic supply and
16 demand, the physical adaptability of the real estate, and market area trends; and

17 (b) develop an opinion of the highest and best use of the real estate.

18 18. USPAP Standard Rule 1-4 states:

19 In developing a real property appraisal, an appraiser must collect, verify, and analyze
20 all information necessary for credible assignment results.

21 (a) When a sales comparison approach is necessary for credible assignment results,
22 an appraiser must analyze such comparable sales data as are available to indicate a value
23 conclusion.

24 (b) When a cost approach is necessary for credible assignment results, an appraiser
25 must:

26 (i) develop an opinion of site value by an appropriate appraisal method or
27 technique;

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1 (ii) analyze such comparable cost data as are available to estimate the cost new of
2 the improvements (if any); and

3 (iii) analyze such comparable data as are available to estimate the difference
4 between the cost new and the present worth of the improvements (accrued
5 depreciation).

6 (c) When an income approach is necessary for credible assignment results, an
7 appraiser must:

8 (i) analyze such comparable rental data as are available and/or the potential
9 earnings capacity of the property to estimate the gross income potential of the
10 property;

11 (ii) analyze such comparable operating expense data as are available to estimate
12 the operating expenses of the property;

13 (iii) analyze such comparable data as are available to estimate rates of
14 capitalization and/or rates of discount; and

15 (iv) base projections of future rent and/or income potential and expenses on
16 reasonably clear and appropriate evidence.

17 (d) When developing an opinion of the value of a leased fee estate or a leasehold
18 estate, an appraiser must analyze the effect on value, if any, of the terms and conditions of
19 the lease(s).

20 (e) When analyzing the assemblage of the various estates or component parts of a
21 property, an appraiser must analyze the effect on value, if any, of the assemblage. An
22 appraiser must refrain from valuing the whole solely by adding together the individual
23 values of the various estates or component parts.

24 (f) When analyzing anticipated public or private improvements, located on or off the
25 site, an appraiser must analyze the effect on value, if any, of such anticipated
26 improvements to the extent they are reflected in market actions.

27 (g) When personal property, trade fixtures, or intangible items are included in the
28 appraisal, the appraiser must analyze the effect on value of such non-real property items.

1 19. USPAP Standard Rule 1-5 states:

2 When the value opinion to be developed is market value, an appraiser must, if such
3 information is available to the appraiser in the normal course of business:

4 (a) analyze all agreements of sale, options, and listings of the subject property current
5 as of the effective date of the appraisal; and

6 (b) analyze all sales of the subject property that occurred with the three (3) years prior
7 to the effective date of the appraisal.

8 20. USPAP Standard Rule 1-6 states:

9 In developing a real property appraisal, the appraiser must:

10 (a) reconcile the quality and quantity of data available and analyzed within the
11 approaches used; and

12 (b) reconcile the applicability or suitability of the approaches used to arrive at the
13 value conclusion(s).

14 21. USPAP Standards Rule 2-1 states:

15 Each written or oral real property appraisal report must:

16 (a) clearly and accurately set forth the appraisal in a manner that will not be
17 misleading.

18 (b) contain sufficient information to enable the intended users of the appraisal to
19 understand the report properly; and

20 (c) clearly and accurately disclose all assumptions, extraordinary assumptions,
21 hypothetical conditions, and limiting conditions used in the assignment.

22 22. USPAP Standards Rule 2-2 states:

23 Each written real property appraisal report must be prepared under one of the
24 following three options and prominently state which option is used: Self-Contained Appraisal
25 Report, Summary Appraisal Report, or Restricted Use Appraisal Report.

26 ...

27 (b) The content of a Summary Appraisal Report must be consistent with the intended
28 use of the appraisal, and, at a minimum;

- 1 (i) state the identity of the client and any intended users, by name or type;
2 (ii) state the intended use of the appraisal;
3 (iii) summarize information sufficient to identify the real estate involved in the
4 appraisal, including the physical and economic property characteristics relevant to the
5 assignment;
6 (iv) state the real property interest appraised;
7 (v) state the type and definition of value and cite the source of the definition;
8 (vi) state the effective date of the appraisal and the date of the report;
9 (vii) summarize the scope of work used to develop the appraisal;
10 (viii) summarize the information analyzed, the appraisal methods and techniques
11 employed, and the reasoning that supports the analyses, opinions, and conclusions;
12 exclusion of the sales comparison approach, cost approach, or income approach must
13 be explained;
14 (ix) state the use of the real estate existing as of the date of value and the use of the
15 real estate reflected in the appraisal; and, when an opinion of highest and best use
16 was developed by the appraiser, summarize the support and rationale for that opinion;
17 (x) clearly and conspicuously:
18 • state all extraordinary assumptions and hypothetical conditions; and
19 • state that their use might have affected assignment results; and
20 (xi) include a signed certification in accordance with Standards Rule 2-3.

21
22 23. USPAP Standards Rule 2-3 states:

23 Each written real property appraisal report must contain a signed certification that is
24 similar in content to the following form:

25 I certify that, to the best of my knowledge and belief:

26 -- the statements of fact contained in this report are true and correct.

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- 1 -- the reported analyses, opinions, and conclusions are limited only by the reported
2 assumptions and limiting conditions and are my personal, impartial, and unbiased
3 professional analyses, opinions, and conclusions.
- 4 -- I have no (or the specified) present or prospective interest in the property that is the
5 subject of this report and no (or the specified) personal interest with respect to the
6 parties involved.
- 7 -- I have no bias with respect to the property that is the subject of this report or to the
8 parties involved with this assignment.
- 9 -- my engagement in this assignment was not contingent upon developing or reporting
10 predetermined results.
- 11 -- my compensation for completing this assignment is not contingent upon the
12 development or reporting of a predetermined value or direction in value that favors
13 the cause of the client, the amount of the value opinion, the attainment of a stipulated
14 result, or the occurrence of a subsequent event directly related to the intended use of
15 this appraisal.
- 16 -- my analyses, opinions, and conclusions were developed, and this report has been
17 prepared, in conformity with the *Uniform Standards of Professional Appraisal*
18 *Practice*.
- 19 -- I have (or have not) made a personal inspection of the property that is the subject of
20 this report. (If more than one person signs this certification, the certification must
21 clearly specify which individuals did and which individuals did not make a personal
22 inspection of the appraised property.)
- 23 -- no one provided significant real property appraisal assistance to the person signing
24 this certification. (If there are exceptions, the name of each individual providing
25 significant real property appraisal assistance must be stated.)
- 26 24. USPAP Ethics Rule states:

27 **ETHICS RULE**

28 To promote and preserve the public trust inherent in professional appraisal

1 practice, an appraiser must observe the highest standards of professional ethics. This ETHICS
2 RULE is divided into four sections: Conduct, Management, Confidentiality, and Record Keeping.
3 The first three sections apply to all appraisal practice, and all four sections apply to appraisal
4 practice performed under STANDARDS 1 through 10.

5 Compliance with USPAP is required when either the service or the appraiser is obligated
6 by law or regulation, or by agreement with the client or intended users, to comply. In addition to
7 these requirements, an individual should comply any time that individual represents that he or she
8 is performing the service as an appraiser.

9 An appraiser must not misrepresent his or her role when providing valuation services that
10 are outside of appraisal practice.

11 Conduct:

12 An appraiser must perform assignments ethically and competently, in accordance
13 with USPAP and any supplemental standards agreed to by the appraiser in accepting the
14 assignment. An appraiser must not engage in criminal conduct. An appraiser must perform
15 assignments with impartiality, objectivity, and independence, and without accommodation of
16 personal interests.

17 In appraisal practice, an appraiser must not perform as an advocate for any party or
18 issue.

19 An appraiser must not accept an assignment that includes the reporting of
20 predetermined opinions and conclusions.

21 An appraiser must not communicate assignment results in a misleading or fraudulent
22 manner. An appraiser must not use or communicate a misleading or fraudulent report or
23 knowingly permit an employee or other person to communicate a misleading or fraudulent report.

24 An appraiser must not use or rely on unsupported conclusions relating to
25 characteristics such as race, color, religion, national origin, gender, marital status, familial status,
26 age, receipt of public assistance income, handicap, or an unsupported conclusion that
27 homogeneity of such characteristics is necessary to maximize value.

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1 Record Keeping:

2 An appraiser must prepare a workfile for each appraisal, appraisal review, or
3 appraisal consulting assignment. The workfile must include:

- 4 • the name of the client and the identity, by name or type, of any other intended
5 users;
- 6 • true copies of any written reports, documented on any type of media;
- 7 • summaries of any oral reports or testimony, or a transcript of testimony, including
8 the appraiser's signed and dated certification; and
- 9 • all other data, information, and documentation necessary to support the appraiser's
10 opinions and conclusions and to show compliance with this Rule and all other
11 applicable Standards, or references to the location(s) of such other documentation.

12 An appraiser must retain the workfile for a period of at least five (5) years after
13 preparation or at least two (2) years after final disposition of any judicial proceeding in which the
14 appraiser provided testimony related to the assignment, whichever period expires last.

15 An appraiser must have custody of his or her workfile, or make appropriate workfile
16 retention, access, and retrieval arrangements with the party having custody of the workfile.

17 25. USPAP Competency Rule states:

18 **COMPETENCY RULE**

19 Prior to accepting an assignment or entering into an agreement to perform any
20 assignment, an appraiser must properly identify the problem to be addressed and have the
21 knowledge and experience to complete the assignment competently; or alternatively, must:

- 22 1. Disclose the lack of knowledge and/or experience to the client before
23 accepting the assignment;
- 24 2. Take all steps necessary or appropriate to complete the assignment
25 competently; and
- 26 3. Describe the lack of knowledge and/or experience and the steps taken to complete
27 the assignment competently in the report.

28 26. USPAP Scope of Work Rule states:

SCOPE OF WORK

For each appraisal, appraisal review, and appraisal consulting assignment, an appraiser must:

1. Identify the problem to be solved;
2. Determine and perform the scope of work necessary to develop credible assignment results;
3. Disclose the scope of work in the report.

An appraiser must properly identify the problem to be solved in order to determine the appropriate scope of work. The appraiser must be prepared to demonstrate that the scope of work is sufficient to produce credible assignment results.

Problem Identification

An appraiser must gather and analyze information about those assignment elements that are necessary to properly identify the appraisal, appraisal review or appraisal consulting problem to be solved.

Scope of Work Acceptability

The scope of work must include the research and analyses that are necessary to develop credible assignment results.

An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use.

An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.

Disclosure Obligations

The report must contain sufficient information to allow intended users to understand the scope of work performed.

FACTS

PROPERTY APPRAISED

27. On or about September 19, 2006, Respondent completed a real estate appraisal report for the property located at 7222 Mace Place, Los Angeles, California, with a concluded opinion

1 of value at \$445,000. The property consisted of a 5,120 square foot interior site improved to an
2 approximately 644 square foot, two bedroom, one bathroom, single story residence constructed in
3 1923. Respondent's improvement sketch delineated additional enclosed areas attached to the rear
4 of the residence and garage, but these areas were not described or included in the calculation of
5 gross living area of the residence in Respondent's report. The intended use of the appraisal report
6 was for mortgage financing purposes. The report contains certain errors or omissions, as set forth
7 below, which are violations of the provisions of USPAP, the California Business and Professions
8 Code, and California Code of Regulations.

9 **BASIS AND CAUSE FOR DISCIPLINE**

10 28. Respondent is subject to disciplinary action under California Code of Regulations
11 section 3721, subdivisions (a)(2), (a)(6), and (a)(7), by and through his violation of Regulation
12 sections 3701, 3702 subdivisions (a)(1) and (b), California Business and Professions Code section
13 11328, and the following USPAP violations.

14 **FIRST CAUSE FOR DISCIPLINE**

15 29. Respondent failed to accurately describe the subject neighborhood (S.R.1-1(a), 1-
16 1(b), 1-2(e)(i) and 2-1 (b)).

17 **SECOND CAUSE FOR DISCIPLINE**

18 30. Respondent failed to adequately describe the subject property. The report indicated
19 there were improvements on the site that were not included in the valuation. The report failed to
20 adequately describe these improvements and to explain why they were not valued. The report did
21 not consider demolition costs for the improvements (S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(b), 2-
22 2(b)(iii)).

23 **THIRD CAUSE FOR DISCIPLINE**

24 31. Respondent failed to complete the Cost Approach correctly. The estimate of site
25 value exceeded the prior sale price of the entire property approximately one year earlier, which
26 was not supported (S.R. 1-1(a), 1-1(b), 1-4(b)(iii) and Conduct Section of the Ethic Rule).

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 32. Respondent failed to complete the Sales Comparison Approach correctly. The report
3 failed to adequately describe and properly analyze the comparable sale properties. All of the
4 comparable sale properties were grossly misrepresented in the report (S.R. 1-1(a), 1-4(a),
5 2-2(b)(iii) and Conduct Section of the Ethic Rule)).

6 **FIFTH CAUSE FOR DISCIPLINE**

7 33. Respondent failed to reconcile the prior sale of the subject property with
8 Respondent's final opinion of value. Respondent's final opinion of value significantly exceeded
9 the prior sale of the property (S.R. 1-5(b), 2-2(b)(viii) and Conduct Section of the Ethics Rule).

10 **SIXTH CAUSE FOR DISCIPLINE**

11 34. Respondent rendered appraisal services in a fraudulent manner by misrepresenting all
12 of the comparable sale properties utilized to value the subject property and failed to submit a true
13 copy of his appraisal report and work file to the Office of Real Estate Appraisers when requested
14 (S.R. 2-1(a), Conduct Section of the Ethic Rule and California Business and Professions Code,
15 section 11328).

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Director of the Office of Real Estate Appraisers issue a
19 decision:

- 20 1. Revoking or suspending Real Estate Appraiser License Number AL025728, issued to
21 William P. Ferguson
- 22 2. Ordering William P. Ferguson to pay the Director of the Office of Real Estate
23 Appraisers the reasonable costs of the investigation and enforcement of this case, pursuant to
24 Business and Professions Code section 11409;
- 25 3. Taking such other and further action as deemed necessary and proper.

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Original Signed

DATED: 2/29/12

ELIZABETH SEATERS
Acting Chief of Enforcement
Office of Real Estate Appraisers
State of California

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